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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/644,930	08/21/2003	Mara Fox	MF01U	7372
7590 DON E. ERICKSON LAW OFFICE 7668 EL CAMINO REAL STE. 104 #627 LA COSTA, CA 92009			EXAMINER TORIMERO, ADETOKUNBO OLUSEGUN	
			ART UNIT 3714	PAPER NUMBER
			MAIL DATE 11/04/2008	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/644,930

Applicant(s)

FOX, MARA

Examiner

ADETOKUNBO O. TORIMIRO

Art Unit

3714

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04/28/2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,4-6,8-13,15,16 and 18-22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,4-6,8-13,15,16 and 18-22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/808)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

1. The amendment filed on 04/28/2008 has been entered. It is noted that claims 1,5,13, and 16 have been amended. Claims 3,7,14, and 17 have been cancelled.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1,2,5,6,9-13,16, and 19-22 are rejected under 35 U.S.C. 102(b) as being anticipated by Guess the Flavor (Kissing Games).

Re claims 1 and 5: Guess the Flavor discloses a novelty kit for producing an oral sensation during deep kissing, the novelty kit comprising a first substance / *various candy* to be placed on the tongue of a first person, the substance in the form of a solute / *various candy that melts or that is soluble in water or saliva*; and instructions / *How to play* for use of the first substance with a second person; additionally comprising a second substance / *food items* and wherein the instructions include directions for the use of the first substance and the second substance by the first person and the second person (see page 1, *Things you'll need and How to play*). It is apparent to Examiner that first or second substance could be any various candy and/or food item, or different flavors of the same candy and/or food item as long as it is something edible. It is apparent

that for there to be a kit in order to have the kissing game as described in Guess the Flavor.

Re claims 2 and 6: Guess the Flavor teaches wherein the first substance has an identifiable taste; wherein the second substance has a different identifiable taste than the taste of the first substance (see **Guess the Flavor**). **It is apparent to the Examiner that to guess the taste of substances, there has to be identifiable taste associated with the substance.**

Re claims 9-12 and 19-22: Guess the Flavor teaches wherein the instructions direct the first person on placement on the tongue of the first substance prior to the first and second person engaging in deep kissing; wherein the instructions direct the first and second persons on placement on their respective tongues of the first and second substances prior to the first and second person engaging in deep kissing; wherein the instructions direct the first and second persons on the selection of tastes of the first and second substances; herein the instructions identify moods created by the selected tastes and wherein the instructions direct the first and second persons on the selection of the first and second substances to create a selected mood (see **How to play**).

Re claims 13 and 16: Guess the Flavor teaches a method for producing an oral sensation during deep kissing, the method comprising: placing a first substance in the form of a

solute / various candy or food item that melts or that is soluble in water or saliva having an identifiable taste on the tongue of a first person (see **Guess the Flavor**); and instructing the first person on use of the first substance with a second person (see **How to play**). It is apparent to the Examiner that to guess the taste of substances, there has to be identifiable taste associated with the substance.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 4,8,15, and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Guess the Flavor (Kissing Games) in view of AAPA (Applicants Admitted Prior Art).

Re claims 4 and 8: Guess the flavor teaches the novelty kit containing first substance and instructions.

However, Guess the flavor does not teach the kit wherein the first substance is in the form of a solute containing an extract of the first substance; where the solute is water based; wherein the second substance is in the form of a solute containing an extract of the second substance; where the solute is water based.

AAPA teaches the kit wherein the first substance is in the form of a solute containing an extract of the first substance; where the solute is water based; wherein the second substance is in

the form of a solute containing an extract of the second substance; where the solute is water based (**see background of the Invention**).

Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to include the combination of the AAPA and Guess the Flavor game so has to have substances soluble in water and hence soluble in the mouth of the player.

Re claim 15 and 18: Guess the Flavor teaches the method for producing an oral sensation.

However, Guess the Flavor does not teach the method wherein the first substance is in the form of a solute containing an extract of the first substance; where the solute is water based; wherein the second substance is in the form of a solute containing an extract of the second substance; where the solute is water based.

AAPA teaches the method wherein the first substance is in the form of a solute containing an extract of the first substance; where the solute is water based; wherein the second substance is in the form of a solute containing an extract of the second substance; where the solute is water based (**see background of the Invention**).

Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to include the combination of the AAPA and Guess the Flavor game so has to have substances soluble in water and hence soluble in the mouth of the player.

Response to Arguments

6. Applicant's arguments filed 04/28/2008 have been fully considered but they are not persuasive.

In response to the applicant's argument that Guess the Flavor doesn't teach a kit, the examiner disagrees. The examiner points out that it is obvious that for such a game as guess the flavor, there has to be a kit with all of the items taught and cited by the game instruction from the game website as cited. Examiner further points out that "Guess the flavor" teaches the method involved in the kissing game which claims how the items in the kit would be used and hence inherently teaches the kit of materials, items, etc.

In response to the applicant's argument that Guess the flavor suggests the purchase of over-the-counter food, the examiner disagrees. The examiner points out that the reference teaches the claimed limitation of providing food item for the playing of the game as taught by the applicant and do not teach buying the food over the counter as stated by the applicant.

In response to applicant's argument that the reference do not teach using of solute as the food item, the examiner disagrees. The examiner points out that a solute is any substance e.g. salt, sugar, various candies, etc, that can dissolve in a water based solvent or saliva, which therefore means and interprets that the items taught by Guess the flavor teaches this limitation of solute.

In response to the argument that there is no second substance placed on the tongue of the second person in the reference, Examiner notes that it is apparent that for the second person or second team's turn during the game, the second substance has to be placed in the second person.

In response to the argument that the substance was not placed on the tongues of the players, the examiner disagrees. The examiner points out that par.2 under How to play of Guess the flavor teaches about the player eating or putting the food item in their mouth, which examiner points out that the item will be placed on the tongue.

In response to the argument that the AAPA's background of the invention does not teach usable extracts, the examiner disagrees. The examiner contends that that the term extract found in the background includes a wide range of various extracts that are both too concentrated and those that are not. Therefore the AAPA teaches that extracts can be used in the kissing game. Examiner also points out that Guess the flavor teaches that fruits can be used which examiner points out is a source of extract.

In response to response to argument that a kit as described requires instructions and the solutes, the examiner points out that the reference overcomes this argument. Examiner points out that items such as various candy and/or food item and the instructions from the Guess the flavor website covers the requirement of the kit as argued by the applicant.

In response to response to argument on if taste is more important than mood in determining oral sensation, the examiner simply points out that the reference Guess the flavor teaches the applicant's limitation of player utilizing the taste bud for tasting the items placed in their mouths.

In response to the response to argument that Guess the flavor is simply teaching and directed to eating food items, the examiner disagrees and points out that Guess the flavor teaches placing food in the player's mouth eating or not. The examiner points out that the objective of Guess the flavor is to get the player to have the taste of the food item in their mouth and not necessarily to eat the food.

In response to the response to argument that the reference does not teach placing solutes simultaneously, the examiner points out that the claim has been examined and interpreted as written.

In response to the argument about the instructions identifying the moods, it is apparent to the Examiner that a bitter food makes the eater frown which implies that the taste of the food item used determines the eaters mood; also the Examiner points the Applicant to the background of invention in the Applicant's admitted prior art.

Conclusion

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Adetokunbo O. Torimiro whose telephone number is (571) 270-1345. The examiner can normally be reached on Mon-Fri (8am - 4pm).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Vo can be reached on (571) 272-4690. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

/A. O. T./

Examiner, Art Unit 3714

/John M Hotaling II/

Supervisory Patent Examiner, Art Unit 3714